



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Senate Bill 106

**Senate Substitute
Amendment 1, as Amended by
Senate Amendments 1, 2 and 3**

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Contact: Ronald Sklansky, Senior Staff Attorney (266-1946)

A. FIXED SUM AND PERCENTAGE-EXPRESSED ORDERS

1. Current Law

In general, a court order for the support of minor children may be expressed as a percentage of parental income or as a fixed sum, or as a combination of both in the alternative by requiring payment of the greater or lesser of either a percentage of parental income or a fixed sum. [See ss. 767.08 (2) (b), 767.23 (1) (c), 767.25 (1) (a) and 767.265 (3m), Stats. Section 767.08 (2) (b), Stats., relating to actions to compel support, also allows a percentage-expressed order to be made in connection with maintenance of the spouse.]

2. Substitute Amendment

The substitute amendment provides that a child support order, and an order for maintenance in an action to compel support, must be expressed as a fixed sum, unless the parties have stipulated to expressing the amount of support as a percentage of the payer's income. Such a stipulation may be approved by a court only if all of the following apply:

a. The state is not seeking to establish paternity; the state has not begun an action to establish or enforce a child support or maintenance obligation; the state has not begun an action to establish or enforce a child support or maintenance obligation; or the state has not provided specified aid on behalf of a dependent child or child's custodial parent.

b. The payer is not subject to any other order, in any other action, for the payment of child or family support or maintenance.

c. All payment obligations included in the order are expressed as a percentage of the payer's income.

[See SECTIONS 3 to 6 and 8 of the substitute amendment.]

The substitute amendment also provides that in order to undertake a proceeding to revise a judgment or order with respect to child or family support, a court is not required to make a finding of a substantial change in circumstances (as required under current law) to change to a fixed sum the manner in which the amount of child or family support is expressed in the judgment or order. [See SECTIONS 11 and 12 of the substitute amendment.]

Finally, in order to assist county child support agencies when converting child support orders to fixed-sum orders, the substitute amendment appropriates \$1,467,400 of general purpose revenue in the 2001-02 fiscal year. The funds are to be allocated to counties on the basis of the number of percentage-expressed or mixed orders in a county in cases in which the state is a real party in interest. [See SECTIONS 1 and 2 of the substitute amendment.]

B. DISCLOSURES

1. Current Law

Under current law, each order for child support, family support or maintenance payments must include an order describing the following disclosure requirements:

- a. The payer and payee must notify the county child support agency of any change of address within 10 business days of the change.
- b. The payer must notify the child support agency within 10 business days of any change of employer and of any substantial change in the amount of income that will affect the monetary obligation.

[See s. 767.263 (1), Stats.]

Current law also provides that in any action affecting the family, a court must require each party to furnish full disclosure of all assets owned in full or in part by either party separately or by the parties together. Debts and liabilities of the parties must be disclosed as well. Further, when child support or family support has been ordered, and the state is an interested party, a court *must* require the payer to annually furnish the disclosure form and may require the payer to annually furnish state and federal income tax returns to the appropriate county child support agency. When the state is not an interested party, a court *may* require the payer to annually furnish the disclosure form and a copy of state and federal income tax returns to the party receiving support. [See s. 767.27 (1) and (2m), Stats.]

2. Substitute Amendment

The substitute amendment provides, with respect to the requirement that a payer notify a county child support agency of any substantial change in income, that the report also be made to the payee and that it must include the receipt of bonus compensation. Regarding the disclosure of financial status, the substitute amendment provides that in every action in which a court has ordered a party to pay child or family support, including an action to revise a judgment or order, the court must require both parties annually to exchange financial information. If a party has failed to furnish this information, a court may

award to the party bringing the action costs and reasonable attorney fees. [See SECTIONS 7, 9 and 10 of the substitute amendment.]

C. ANNUAL ADJUSTMENTS IN SUPPORT ORDERS

1. Current Law

Section 767.33, Stats., generally provides that a temporary or final order for child support may provide for an adjustment in the support amount to be paid based on a change in the payer's income. However, no adjustment may be made unless the order provides for it and the party receiving payments applies for an adjustment. An adjustment may be made only once in any year. An adjustment only applies to a fixed-sum order and not to an order expressed as a percentage of parental income. Following a hearing, the payer may avoid an adjustment if it is established that extraordinary circumstances beyond the payer's control prevent fulfillment of the adjusted support obligation.

2. Substitute Amendment

The substitute amendment repeals and recreates s. 767.33, Stats., to provide that an order for child or family support may provide for an annual adjustment in the amount to be paid based on a change in the payer's income, if the support is expressed in the order as a fixed sum and based on a percentage standard established by the Department of Health and Family Services. The order must specify what information the parties will exchange to determine whether the payer's income has changed and must specify the manner and timing of the information exchange. Only one adjustment may be made in a year.

The substitute amendment also provides that if a payer's income changes from the amount found in the order or stipulated to by the parties, the parties may implement an adjustment by stipulating to the changed income amount and to the adjusted child or family support amount.

Under the substitute amendment, any party may file a motion, petition or order to show cause for the implementation of an annual adjustment if any of the following applies:

- a. A party refuses to provide financial information.
- b. The payer's income changes, but a party refuses to sign the stipulation for an adjustment.

The substitute amendment also provides that an adjustment will be delayed if any of the following applies:

- a. The payee seeks an adjustment and the payer establishes that extraordinary circumstances beyond his or her control prevent fulfillment of the adjustment.
- b. The payer seeks an adjustment and the payee establishes that the payer voluntarily and unreasonably reduced income below earning capacity.
- c. The payer seeks an adjustment and the payee establishes that the adjustment would be unfair to the child.

If a party unreasonably fails to comply with the adjustment provisions, a court or family court commissioner may award to the aggrieved party actual costs, including service costs, any costs attributable to time missed from employment, the cost of travel to and from court and reasonable attorney fees.

[See SECTIONS 13, 14 and 15 of the substitute amendment.]

D. SIMPLE AMENDMENTS

Senate Amendment 1 provides that when the parties annually exchange financial information for the purposes of child or family support, the parties are prohibited from disclosing this information, except as necessary for the purpose of revising a judgment or order.

Senate Amendment 2 amends s. 767.25 (1g), Stats., to provide that, in determining child support payments, a court may impute income by setting an amount determined by the court to represent the parent's actual ability to earn, based on the parent's education, training and work experience, and the availability of work in or near the parent's community. [Under current rules of the Department of Workforce Development (DWD), when the income of a parent obligated to pay child support is less than the parent's earning capacity, a court may base support on an amount determined to represent the payer's ability to earn or by imputing the income a person would earn by working 40 hours per week for the federal minimum hourly wage. See s. DWD 40.03 (3).]

Senate Amendment 2 also creates a nonstatutory provision directing DWD to study whether arrearages in child or family support, that accrue while a person's income is below the federal poverty line, should be capped at a specific level, unless a court determines that the party had the actual ability to earn more than the federal poverty line amount for a single individual. The provision also requests the department to examine how arrearages should be paid if a payer experiences asset accumulation outside of earned income. The department is required to report the study's results, findings and recommendations no later than October 1, 2001 to the chairs of the Senate and Assembly Judiciary committees.

On June 26, 2001 the Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform took the following actions:

1. Senate Amendment 1 was adopted on a vote of Ayes, 5, Noes, 0.
2. Senate Amendment 2 was adopted on a vote of Ayes, 4, Noes, 1.
3. Senate Substitute Amendment 1, as amended, was adopted on a vote of Ayes, 4, Noes, 1.
4. Senate Bill 106, as amended, was recommended for passage on a vote of Ayes, 4, Noes, 1.

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